IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7158 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHANKABHAI NARSINHBHAI BHURIYA

Versus

POLICE COMMISSIONER

Appearance:

MR PM DAVE for Petitioner

MR SP DAVE AGP for Respondent No. 1, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the detention order passed by the Police Commissioner of Ahmedabad city on 25.6.1997, invoking the powers under sec. 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred as to the "Act").

2. In order to appreciate the contentions, few facts may be stated. Against the petitioner about three complaints came to be lodged with Vatva Police Station. All the complaints were with regard to the offences punishable under sec. 454, 457, 380 read with section 114 of IPC. After coming to know about such complaints, the Commissioner of Police on making deep inquiry found that the petitioner was the head-strong person, and was by his nefarious activities creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his whims ordesire they were assaulted & beaten brutally and were then made to succum to his desire or whims. The people considering their safety were not coming forth to lodge complaint and have the action in accordance with law. Hearing about the petitioner or seeing him the people used to chevy, as they were feeling insecured. The Police Commissioner then found that to curb the anti-social activities of the petitioner there was no way out but to detain him as under general law, it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 5th May 1997. Consequent upon the same the petitioner came to be arrested. He challenges the legality of the impugned order.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no jurisdiction to describe him as a head-strong person or a dangerous person. Necessary bail papers were not given to him for making effective representation though the co-accused were released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses giving the statements against him ought to have been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He thus assail on the ground of non-supply of better particulars and unjust exercise of privilege also.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22 (5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has

been made are required to be communicated to the detenu, and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts, but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual materials collected from such sources can be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statements against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry personally applying mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest even in the case where the task is assigned to some one else. If he mechanically endorses or accepts the recommendation of some one or his subordinate authority in that behalf, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the Court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine

rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. As per the law made clear hereinabove, the order in question is not passed, and it seems that the exercise of discretion is not in consonance with the requirement of law. The Police Commissioner reading the order produced at Annexure-B entrusted the task of enquiry to his subordinate, and then on receipt of the report from his subordinate, he simply accepted the same and formed the opinion to exercise the previlege not to disclose the facts which would identify the witnesses. When he has not personally inquired applying his mind and satisfied about the exercise of privilege, the privilege exercised being not in consonance with law, the particulars withheld ought to have been supplied for effective representation, but when they were withheld without any just cause, the petitioner could not get full particulars for making effective representation. His right therefore, marred and so the continued detention of the petitioner is illegal. The order of detention, therefore, cannot be maintained and the same has to be quashed.

6. With the result, the petition is allowed and the order detaining the petitioner is held to be unconstitutional & illegal. The same is therefore quashed. The petitioner is ordered to be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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